

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Telefutura Partnership of Douglas	)	File No. EB-09-SD-0103
	)	
Licensee of Station KFTU-DT	)	NAL/Acct. No. 201032940003
Douglas, Arizona	)	
Facility ID #81441	)	FRN:0006495147

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: May 10, 2010****Released: May 12, 2010**

By the District Director, San Diego Office, Western Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find that Telefutura Partnership of Douglas (“Telefutura”), the licensee of Digital Television broadcast station KFTU-DT (“KFTU”) in Douglas, Arizona, apparently willfully and repeatedly violated Section 11.35 of the Commission’s Rules (“Rules”)<sup>1</sup> by failing to ensure the operational readiness of KFTU’s Emergency Alert System (“EAS”) equipment. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”)<sup>2</sup>, that Telefutura is apparently liable for a forfeiture in the amount of eight thousand dollars (\$8,000).

**II. BACKGROUND**

2. On September 1, 2009, agents from the Enforcement Bureau’s San Diego Office conducted an inspection at the main studio of KFTU located at 1111 G Avenue, Douglas, Arizona. Although EAS equipment was present, the agents found that it was not operating properly at the time of inspection. The agents observed that the EAS equipment was capable of transmitting a required weekly test (“RWT”). A review of the EAS logs and printouts generated by the EAS Encoder/Decoder indicated, however, that from February 2009 through August 2009, no required monthly tests (“RMTs”) were recognized as being received or retransmitted from the designated first local primary station (“LP-1”), and that no RWTs had been received from the designated second local primary station (“LP-2”) since January 2007. At the time of the inspection, the staff of KFTU acknowledged that they did not add the LP-2 monitoring source until on or about August 26, 2009.

3. In addition, the agents noted that KFTU was broadcasting a second program stream (Univision programming), which, according to KFTU staff, began operations on June 12, 2009. EAS messages could not be broadcast on this second program stream, as no EAS equipment was connected.

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<sup>1</sup> 47 C.F.R. § 11.35.

<sup>2</sup> 47 U.S.C. § 503(b).

According to both KFTU staff and EAS records, EAS notifications have never been made on the Univision program stream of KFTU.

4. On the date of inspection, the agents contacted the area LP-1 and LP-2 radio stations and requested that they transmit RWTs in order to test the receiver capabilities of KFTU's EAS equipment. Neither of the RWTs could be heard through KFTU's EAS equipment. Printouts from KFTU's EAS equipment indicated that the RWTs were detected, however the printouts stated "Already expired," and did not have any valid header codes for the EAS equipment to recognize the originator of the EAS test or what type of EAS test was being sent.<sup>3</sup> The agents examined KFTU's EAS records and found that there were no entries made indicating: (1) why the EAS equipment was not properly monitoring the two designated local primary radio stations, (2) why the EAS equipment was not operating properly, (3) what may have caused these failures, and (4) what steps were taken to remedy them.

### III. DISCUSSION

5. Section 503(b) of the Act provides that any person who willfully fails to comply substantially with the terms and conditions of any license, or willfully fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.<sup>4</sup> The term "repeated" means the commission or omission of such act more than once or for more than one day.<sup>5</sup>

6. Every broadcast station is part of the nationwide EAS network and is categorized as a participating national EAS source unless the station affirmatively requests authority to refrain from participation, and that request is approved by the Commission.<sup>6</sup> The EAS enables the President and state and local governments to provide immediate and emergency communications and information to the general public.<sup>7</sup> State and local area plans identify local primary sources responsible for coordinating carriage of common emergency messages from sources such as the National Weather Service or local emergency management officials.<sup>8</sup> Required monthly and weekly tests originate from EAS Local or State Primary sources and must be retransmitted by the participating station. As the nation's emergency warning system, the Emergency Alert System is critical to public safety, and we recognize the vital role that broadcasters play in ensuring its success. The Commission takes seriously any violations of the Rules implementing the EAS and expects full compliance from its regulatees.

<sup>3</sup> 47 C.F.R. § 11.33(a). The EAS decoder must at a minimum be capable of decoding the EAS protocol described in 47 C.F.R. § 11.31.

<sup>4</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>5</sup> Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

<sup>6</sup> 47 C.F.R. §§ 11.11, 11.41.

<sup>7</sup> 47 C.F.R. §§ 11.1, 11.21.

<sup>8</sup> 47 C.F.R. § 11.18. State EAS plans contain guidelines that must be followed by broadcast and cable personnel, emergency officials and National Weather Service personnel to activate the EAS for state and local emergency alerts. The state plans include the EAS header codes and messages to be transmitted by the primary state, local, and relay EAS sources.

7. Section 11.35 of the Rules requires all broadcast stations to ensure that EAS encoders, EAS decoders, and attention signal generating and receiving equipment is installed and operational so that the monitoring and transmitting functions are available during the times the station is in operation. Broadcast stations must also determine the cause of any failure to receive required monthly and weekly EAS tests, and must indicate in the station's log why any required tests were not received, and when defective equipment is removed and restored to service.<sup>9</sup> Section 11.61(a)(1) and (2) of the Rules requires broadcast stations to (a) receive monthly EAS tests from designated local primary EAS sources and retransmit the monthly test within 60 minutes of its receipt, and (b) conduct tests of the EAS header and EOM codes at least once a week at random days and times.<sup>10</sup> The requirement that stations monitor, receive, and retransmit the required EAS tests ensures the operational integrity of the EAS system in the event of an actual disaster. Accordingly, appropriate entries must be made in the broadcast station log as specified in Sections 73.1820 and 73.1840, indicating reasons why any tests were not received or transmitted.<sup>11</sup>

8. A review of KFTU's station log from February 2, 2009, through September 1, 2009, revealed that the KFTU's EAS equipment was not operating properly. KFTU did not properly receive or transmit any RMTs from either the LP-1 or the LP-2 station during this period, and there was no record to indicate what was done to remedy this problem. All EAS tests received during this period received an error message that stated "Already expired," with no EAS header protocols, as demonstrated by the tests conducted by the designated LP-1 and LP-2 radio stations during the FCC inspection. There were no appropriate entries made in the EAS log to indicate reasons why tests were continually receiving an expired message and why the RMTs were not transmitted.<sup>12</sup> Also, the second monitoring assignment was not added until on or about August 26, 2009. If a true emergency had occurred during this period and the LP-1 was not operational, a message from the LP-2 would not have been received. Because it was not utilizing a second monitoring source, KFTU may have put viewers at risk.

9. KFTU was also multicasting, using a second program stream to provide Univision programming to the viewing public. Any viewers of this program stream would have been unaware of any EAS alerts or messages, as no EAS equipment was connected. As stated in 11.51(c) of the Rules, all DTV broadcast stations must transmit EAS messages on all program streams.<sup>13</sup>

10. The engineering staff of KFTU acknowledged to the San Diego agents that KFTU's EAS equipment may have been experiencing technical problems on the day of the inspection, and admitted that the second program stream had no connection to KFTU EAS equipment.<sup>14</sup> Telefutura was aware of the EAS requirements, having installed EAS equipment, therefore, this violation is willful. In addition, Telefutura has failed to properly maintain the EAS equipment installed at KFTU for a period of over seven months, and

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<sup>9</sup> 47 C.F.R. § 11.35(a) - (b).

<sup>10</sup> 47 C.F.R. § 11.61(a)(1) - (2). The required monthly and weekly tests must conform to the procedures in the EAS Operational Handbook. *See also, Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, 17 FCC Rcd 4055 (2002).

<sup>11</sup> 47 C.F.R. §§ 73.1820, 73.1840.

<sup>12</sup> Additionally, no request was sent to the District Director of the San Diego Office notifying the office of the defective equipment and requesting additional time to repair the equipment, as required pursuant to Section 11.35(c) of the Rules. 47 C.F.R. § 11.35(c).

<sup>13</sup> 47 C.F.R. § 11.51(c).

<sup>14</sup> After the inspection, Telefutura staff sent an email to the San Diego agent indicating that the technical problems had been corrected. We note that the Commission has stated in the past that a licensee is expected to correct errors when they are brought to the licensee's attention and that such correction is not grounds for a downward adjustment in the forfeiture. *See e.g., AT&T Wireless Services, Inc.* 17 FCC Rcd 21866, 21871-76 (2002).

failed to install any EAS capabilities for its second program stream for more than 80 days. As a result, Telefutura's violation is repeated. Based on the evidence before us, we find that Telefutura apparently willfully and repeatedly violated Section 11.35 of the Rules by failing to ensure the operational readiness of the EAS equipment for its authorized DTV broadcast station, KFTU-DT, Douglas, Arizona.

11. Pursuant to The Commission's *Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("Forfeiture Policy Statement") and Section 1.80 of the Rules, the base forfeiture for EAS equipment not installed or operational is \$8,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>15</sup> Applying the *Forfeiture Policy Statement*, Section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Telefutura Partnership of Douglas is apparently liable for an \$8,000 forfeiture.

#### IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, Telefutura Partnership of Douglas is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of eight thousand dollars (\$8,000) for violating Section 11.35 of the Commission's Rules.<sup>16</sup>

13. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Telefutura Partnership of Douglas **SHALL PAY** the full amount of the proposed forfeiture, or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number if block number 23A (call sign/other ID), and enter the letters "FORF" in block 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer – Financial Operations, 445 12<sup>th</sup> St., S.W., Room 1-A625, Washington, DC 20554.<sup>17</sup> If you have any questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov. If payment is made, violator will send electronic notification on the date said payment is made to WR-Response@fcc.gov.

15. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, San Diego Office, 4542 Ruffner Street, Suite 370, San Diego, California, 92111, and must include the NAL/Acct. No. referenced above.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2)

<sup>15</sup> 47 C.F.R. § 503(b)(2)(E).

<sup>16</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80, 11.35.

<sup>17</sup> See 47 C.F.R. § 1.1914

financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

17. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Telefutura Partnership of Douglas, at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

William R. Zears, Jr.  
District Director  
San Diego Office  
Western Region  
Enforcement Bureau